IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY SEVENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 5526 of 2004

Between:

1 Ranbir Singh Bagga, S/o. Kuldeep Singh Bagga,
R/o. Plot No.4, Sy.No.129/39, Road No. 12, Banjara Hills, Hyderabad.
2 Devender Kaur Bagga W/o. Kuldeep Singh Bagga,
R/o. Plot No.4, Sy.No.129/39, Road No. 12, Banjara Hills, Hyderabad.
3 Satpal Singh Bagga, S/o. Harmahender Singh Bagga,
R/o. Plot No.400, Road No. 14, Banjara Hills, Hyderabad.
4 Kuldeep Singh Bagga, S/o Late Nand Singh Bagga,
R/o. Plot No.4, Sy.No.129/39, Road No. 12, Banjara Hills, Hyderabad.
5 Gurupreet Singh Bagga S/o. Harmahender Singh Bagga,
R/o. Plot No.400, Road No. 14, Banjara Hills, Hyderabad.
6 Inderajeet Kaur S/o. Harmahender Singh Bagga,
R/o. Plot No.400, Road No. 14, Banjara Hills, Hyderabad.

..... PETITIONERS

AND

1 State of Andhra Pradesh, Rep. by its Secretary, Ministry of Municipal Administration, Secretariat Buildings, Hyderabad.
2 Municipal Corporation of Hyderabad rep. by its Commissioner, Tank Bund Road, Hyderabad.

.....RESPONDENS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction or order more particularly a writ of Mandamus declaring the action of the second respondent in asking for the No objection Certificate from the office of the Collector, Hyderabad and also a Clearance Certificate from the Urban Land Ceiling authorities for according permission for construction of multi-storeyed complex in premises bearing Municipal No. 8-2-644/1, situated on the Juncture of Road No. 1 & 12 situated at Road No.12, Banjara Hills, Hyderabad admeasuring 900 sq yards as illegal, null and void.

Counsel for the Petitioner:MR.KISHORE RAI

Counsel for the Respondent No.1.GP FOR MUNCIPAL ADMN. & URBAN DEV.

Counsel for the Respondent No2. Mr.GANTA RAMA RAO

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.5526 OF 2004

ORDER:

The writ petition is filed seeking a Writ of Mandamus declaring the action of the second respondent in asking for No Objection Certificate from the office of the Collector, Hyderabad, and also Clearance Certificate for Construction of Multi-storied Complex in the premises bearing Municipal No.8-2-644/1 situated at Road No.12, Banjara Hills, Hyderabad.

The petitioners claim to be the owners of the premises mentioned hereinabove. They applied for permission under Section 428 and 433 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') proposing to construct a new building in the said premises. The application was rejected by Municipal Corporation of Hyderabad (HMC) officials and they insisted for production of Town Survey Land Register (TSLR) Certificate, No Objection Certificate from the office of the Collector, Hyderabad, and also Clearance Certificate for Construction of Multi-storied Complex.

At the interlocutory stage, with the consent of the learned counsel for the parties, the Writ Petition itself was heard finally and is being disposed of. It is submitted by the learned counsel for the petitioners and the learned Standing Counsel for the MCH that the issue raised in this Writ Petition is squarely covered by the judgment of this Court in HYDERABAD POTTERIES (P) LTD. v. DISTRICT COLLECTOR, which was affirmed by a Division Bench in W.A.No.1096 of 2001 by judgment dt.24-12-2001.

In HYDERABAD POTTERIES CASE (supra), it was held:

….The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector(s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly,

the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more.

On appeal by the Government, the Division Bench in W.A.No.1096 of 2001 observed:

….Should it be noticed that the Commissioner while acting under Section 429(1)(aa) of the Hyderabad Municipal Corporations Act, 1955 read with relevant Building Bye-laws etc., acts as a statutory authority. It is well settled that when a statutory authority is required to make a decision on relevant materials and facts, it is not legally permissible for such authority to base its decision only on one piece of relevant material and to exclude other relevant material. The learned Judge has pointed out that in the decision making many relevant materials such as the proceedings taken by the Statutory authorities under the ULC Act, which attained finality and sale deeds, are not taken into consideration in the decision making. The learned Judge has also pointed out that the so called TSLR entries on the basis of which the application was rejected do not form part of the record placed before the Court. Therefore, looking from any angle, no exception can be taken to the direction issued by the learned Judge to the Commissioner to decide the application de-novo having regard to all the relevant materials and the plea raised by the Joint Collector. No ground is made out to interfere with the order of the learned Judge.

In view of the judgments referred to hereinabove, the impugned action insofar as it requires the petitioner to produce TSLR Certificate is concerned, it runs contrary to the law declared by this Court.

Accordingly, the writ petition is disposed of and it is declared that the Municipal Corporation is not entitled to reject the application for building permission only on the ground that the petitioner did not produce TSLR Certificate. There shall be no order as to costs.

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(V.V.S.RAO, J)

27.8.2004

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To

1 State of Andhra Pradesh, Rep. by its Secretary, Ministry of Municipal Administration, Secretariat Buildings, Hyderabad.
2 Municipal Corporation of Hyderabad rep. by its Commissioner,

Tank Bund Road, Hyderabad.

3 2 CCs to G.P. for Municipal Administration, High Court Bldgs.,

Hyderabad (OUT)

4 2 CD copies.